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April 9, 2009

VIA HAND DELIVERY

The Honorable Charles L. A. Terreni
Chief Clerk and Administrator
The Public Service Commission of South Carolina
101 Executive Center Drive
Columbia, South Carolina 29210

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PUBLIC SERVICE
COMMISSION

Re: • Happy Rabbit, a South Carolina Limited Partnership on behalf of Windridge Townhomes, (hereinafter, "Happy Rabbit") v. Alpine Utilities, Inc., (hereinafter, "Alpine"); Docket No. 2008-360-S
• **Response to Alpine's April 8th Correspondence (copy of the first page of the correspondence attached hereto for your ready reference).**

Dear Mr. Terreni:

Please refer to Alpine's correspondence to you, referenced above. Happy Rabbit's Complaint is now pending before the Public Service Commission of South Carolina, (hereinafter, "Commission"), as is Happy Rabbit's Motion to Conform to Proof and Motion to Amend Complaint. The new Complaint of Carolyn L. Cook, for her period of ownership, is also pending before this Commission.

Implicit in these Complaints, is a request for a return of money overcharged to Alpine's customers. (Nonetheless, Happy Rabbit filed its Motion to Conform to Proof and Motion to Amend Complaint.)

Alpine's admission to the October 6, 2003 communication by Happy Rabbit and Alpine's *de facto* acknowledgment that 58 other entities (landlords or owners) are "similarly situated" could not be anticipated when Happy Rabbit filed its initial Complaint. Alpine's admissions give Happy Rabbit a good faith basis to not only request a refund, but to allege a willful overcharge by Alpine in violation of R. 103-533 (3) S.C. Code Ann. (1976, as amended).

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Alpine next makes the argument that because the charges to Happy Rabbit were made pursuant to an approved tariff, that fact overrides their violation of a state statute, § 27-33-50 S.C. Code Ann. (1976, as amended). Alpine's reliance on an argument that Alpine's willful overcharge was sanctioned, by the fact that the willful overcharges were made pursuant to a Commission approved schedule is inapposite.

Whenever the Commission shall find, after hearing, that the **rates...charges... however or whensoever they shall have theretofore been fixed or established, demanded,...charged or collected by any public utility for any service,...**that the rules,...affecting such rates...charges...are...or in anywise in violation of any provision of law, the Commission shall,...determine the just and reasonable... charges...or practices to be thereafter observed and enforced and [this Commission] **shall fix them by Order as herein provided** (emphasis supplied) § 58-5-290 S.C. Code Ann. (1976, as amended).

Therefore, in recognition of § 58-5-290, the fact that Alpine willfully overcharged Happy Rabbit pursuant to a Commission approved schedule does not absolve Alpine of the willful overcharge in light of § 27-33-50 S.C. Code Ann. (1976, as amended).

As for Alpine's *in pari materia* argument, it is well settled that statutes dealing with the same subject matter are *in pari materia* and must be construed together, if possible, to produce a single, harmonious result, Joiner v. Rivas, 342 S.C. 102, 109, 536 S.E.2d 372, 375 (2000).

In the two Complaints before the Commission, the following statutes are applicable and dealing with the same subject matter: (i) § 58-3-140 (rates, service, and practices of all public utilities), (ii) § 58-5-210 (rates, service, and practices of all public utilities), (iii) § 58-5-290 (rates, service, and practices of all public utilities), (iv) § 58-5-300 (rates, services, and practices of all public utilities), and (v) § 27-33-50 (*de facto*, rates, services, and practices of all public utilities), and are *in pari materia* and must be construed together, if possible, to produce a single, harmonious result Joiner v. Rivas, *supra*. Furthermore, § 58-5-290 additionally is *in pari materia* with § 27-33-50 in that § 58-5-290 specifically gives this Commission jurisdiction where improper rates **are charged in violation of any provision of law**, such as § 27-33-50.

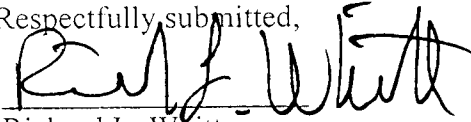
Based on the foregoing, the Pleadings and files in this Docket, the Complaints of Carolyn L. Cook and Happy Rabbit should not be dismissed.

Correspondence to Charles L.A. Terreni

April 9, 2009

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Respectfully submitted,

A handwritten signature in black ink, appearing to read "R. L. Whitt", written over a horizontal line.

Richard L. Whitt

Jefferson D. Griffith, III

Counsel of Record for
Happy Rabbit, a South Carolina
Limited Partnership on behalf of Windridge
Townhomes and
Carolyn L. Cook

RLW/jjy

cc: Certificate of Service

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April 8, 2009

VIA HAND-DELIVERY

The Honorable Charles L.A. Terreni
Chief Clerk/Administrator
Public Service Commission of South Carolina
101 Executive Center Drive
Columbia, South Carolina 29210

RE: Happy Rabbit, LP on behalf of Windridge Townhomes v. Alpine Utilities, Inc.;
Docket No. 2008-360-S

Dear Mr. Terreni:

I am writing in response to Happy Rabbit, LP's ("Happy Rabbit") April 2, 2009 letter regarding the complaint filed by Mrs. Carolyn L. Cook, the April 2, 2009 letter filed by the South Carolina Office of Regulatory Staff ("ORS") in this matter, and Happy Rabbit's arguments with respect to the jurisdiction of the Public Service Commission of South Carolina ("Commission").¹ Therein, Happy Rabbit states that the "Commission must hear the willful overcharge Complaint under R. 105-533(3) (*sic*) *in pari materia* with § 27-33-50 S.C. Code Ann. (1976, as Amended)."

Alpine initially responds that Happy Rabbit's current Complaint does not contain a claim of a "willful overcharge" or a request for a refund of monetary damages.² See Alpine Response to Motion to Conform, p. 6. Furthermore, neither Happy Rabbit nor Mrs. Cook have made any assertion of fact which would support its claim that Alpine has willfully overcharged these admitted customers. In its letter dated April 2, 2009, ORS corroborates this position by stating "[w]hile the complainants allege that they have been overcharged and seek relief under 26 S. C.

¹ In the event that Alpine does not herein directly dispute a claim, statement, representation or characterization by Happy Rabbit, such omission is neither an acquiescence to any of Happy Rabbit's claims, statements, representations, or characterizations nor a waiver of any position previously asserted by Alpine.

² Alpine notes that Happy Rabbit's Complaint does not raise any assertion of a "willful overcharge" and that any such claim is therefore not presently before the Commission. While Happy Rabbit has filed a Motion to Conform to Proof (and now a Motion to Amend the Complaint) to include such a claim, same have not yet been ruled upon by the Commission.

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BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 2008-360-S

IN RE:

Happy Rabbit, LP on Behalf of,
Windridge Townhomes,

Complainant,

v.

Alpine Utilities, Inc.,

Respondent

CERTIFICATE OF SERVICE

SO. PUBLIC SERVICE
COMMISSION

2009 APR -3 PM 4:45

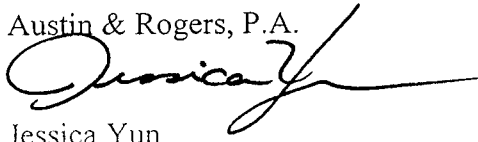
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I, Jessica Yun, an employee of Austin & Rogers, P.A., certify that I caused to be delivered a copy of Happy Rabbit's Response to Alpine's April 8th Correspondence (copy of the first page of the correspondence attached hereto for your ready reference) in the above referenced matter as indicated below, via Hand Delivery as addressed below, with proper postage affixed thereto, or e-mail on April 9, 2009.

Attorney Benjamin P. Mustian
930 Richland Street
Columbia S.C., 29201
Via Hand-Delivery

Nanette S. Edwards, Esquire
Via e-mail

Austin & Rogers, P.A.



Jessica Yun

Columbia, South Carolina
April 9, 2009

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